

Zoning Board of Appeals Minutes 04/09/2014

MASHPEE ZONING BOARD OF APPEALS APRIL 9, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, April 9, 2014, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members, Jonathan Furbush, William A. Blaisdell, James Reiffarth, Richard Jodka, Associate Members Domingo K. DeBarros and Scott Goldstein were present and acting throughout. Building Commissioner Richard Morgan was also present.

Chairman, Jonathan Furbush opened the meeting at 6:00 p.m. and announced that the meeting was being televised live on local Mashpee television.

PLEDGE OF ALLEGIANCE

CONTINUED HEARINGS

Stephen G. Miller, Trustee: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 22 Squaws Lane, (Map 117 Parcel 84), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board).

Mr. Furbush announced the four regular Board members and Associate Member Scott Goldstein and Mr. DeBarros will alternate the voting on each particular hearing.

Tom Bunker, BSS Design representing the petitioner for the raze and replace project. He stated the project was approved by Conservation Commission and received an order of conditions. The house is located on the South end of Squaws Lane and fronts Nantucket Sound in the Popponesset Overlay District. The lot is non-conforming at 14,400 square feet, and has a 30 foot setback in the front of the garage, has 7 foot setback on the sides and 23 foot setback on the water side property line. The existing structure is 3,065 square feet with 21.3% lot coverage. The velocity zone is 17 (elevation 15 and 13). The proposed new home will be almost exactly the same foot print with four bedrooms. It will be about 30 feet of the average grade and is being moved back 2 to 3 feet back from the shoreline with new dune vegetation plantings. The storm water will be trapped with drywells and the structural engineer will design the footings for the proper foundation on piers.

Mr. Furbush read the comments from the Board of Health; "Septic plan approved 2/20/14 for 4 bedrooms. Revised plans dated 2/27/14 approved 3/7/14. Septic permit required to be activated by licensed installer prior to issuance of building permit."

Mr. Jodka made a motion to approve Stephen G. Miller's request for a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 22 Squaws Lane, (Map 117 Parcel 84), Mashpee, MA. The Board approves this proposal and finds it is not substantially more detrimental than the existing non-conforming structure, the new dwelling will be an improvement and will conform to current building code requirements, is comparable in size and character to other structures in the neighborhood and has sufficient parking and setbacks as may be required. Also referencing a plot plan prepared by BSS Design Engineering & Surveying, at 164 Katharine Lee Bates Road, Falmouth, MA, titled; Proposed House Reconstruction at 22 Squaws Lane, Mashpee, MA, prepared for Stephen Miller, scale 1" = 20', dated February 14, 2014, drawn EJP, TJB job number 13220 revisions; added "4 bedroom" to the house label, limit of work, dimensions to high water February 27, 2014 TJB, added roof drainage and garage construction note. March 23, 2014 TJB, drawing number B21-94.

Mr. Reiffarth seconded, yes, Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Goldstein, yes. All were in favor.

Christopher J. and Lisa Joe: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 47 Monahansett Road, (Map 123 Parcel 102), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board).

Christopher J. and Lisa Joe: Request a Variance under Article VII §174-31 (Land Space Requirements) of the Zoning By-laws to vary the rear, front, and side setback requirements for construction of a new single-family dwelling on property located in an R-3 Zoning District at 47 Monahansett Road, (Map 123 Parcel 102), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board).

Christopher Joe, is the homeowner representing himself stated he owned the home located at 43 Monahansett for approximately 15 years with his sister and purchased the house to the left (47 Monahansett). The home belonged to the University Of Notre Dame and was donated by the family that owned it. His goal was to renovate, but there was extensive damage and had not been used the past 15 years. The existing foundation is approximately 1,400 square foot, and he wants to build a small Cape style home. He stated in order to build the Cape home, he would have to move further back and further forward because it's a narrow foundation. They are extending about one foot in the front and about a foot and half in the back, with a farmer's porch. He wants to eliminate the existing deck and build a patio instead. He went to the Conservation Commission last fall and had a wetlands map drawn, surveyed, and approved for the patio and plantings.

The existing home does not have the proper setback from Monahansett Road and believes he is 8.5 feet from his neighbor and needs 10 feet with the existing foundation. He is not extending any closer to his neighbor.

Mr. Furbush asked about the existing stoop at the front door. Mr. Joe stated it will be replaced by a farmer's porch. He stated the existing stoop is about 2.5 feet, so will be 2.5 feet closer to the street than what currently exists. He stated that by removing the deck will avoid being in the flood zone and is elevation 12, which is well above the wetlands and flood zone.

Mr. Goldstein asked if he is keeping the shed. Mr. Joe stated the shed is in great shape and encroaches a little on his neighbor's property line. Mr. Furbush said he can keep the shed but asked Mr. Joe to move it 5 feet from the lot line.

Mr. Jodka asked if the neighbors are okay with the rebuild. Mr. Joe said; "yes and happy someone is doing something with the property." Mr. Furbush asked if drywells were needed. Mr. Joe said; "No".

Mr. Furbush reading the Board of Health Comments: "Dwelling appears to be on the same footprint. New septic was installed in September, 2013 for three bedrooms. Septic As-Built plan sent to engineer to depict on the site plan. If front porch is on sono tubes then there is no setback issue with the leaching facility."

Mr. Jodka made a motion to approve Christopher J. and Lisa Joe's request for a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 47 Monahansett Road, (Map 123 Parcel 102), Mashpee, MA. The Board approves this proposal and finds it is not substantially more detrimental than the existing non-conforming structure, the new dwelling will be an improvement and will conform to current building code requirements, is comparable in size and character to other structures in the neighborhood and has sufficient parking and setbacks as may be required. Also referencing a plot plan prepared by JC Engineering, Inc. 2854 Cranberry Highway, East Wareham, MA, titled; Proposed Site Plan at 47 Monahansett Road, Mashpee, MA, prepared for Christopher Joe, scale: 1" = 10', dated February 24, 2014, revised, March 21, 2014.

Mr. Blaisdell seconded, yes, Mr. Furbush, yes, Mr. Reiffarth, yes, Mr. DeBarros, yes. All were in favor.

Mr. Furbush stated the Variance is not required with a Written Finding. Mr. Jodka made a motion that the Zoning Board of Appeals withdraw the Variance for Christopher Joe and Lisa Joe's under Article VII §174-31 (Land Space Requirements) of the Zoning By-laws to vary the rear, front, and side setback requirements for construction of a new single-family dwelling on property located in an R-3 Zoning District at 47 Monahansett Road, (Map 123 Parcel 102), Mashpee, MA.

Mr. Furbush seconded, the withdrawal, Mr. Blaisdell, yes, Mr. Reiffarth, yes, Mr. Goldstein, yes. All were in favor.

Christos Varetimos: (Brickyard Marketplace Nominee Trust): Request a modification under Special Permit SP-98-83 to place a 16 foot by 10 foot cooler/freezer in rear of retail restaurant on property located in a C-2 Zoning District at 439 Nathan Ellis Highway (Map 72 Parcel 23), Mashpee, MA. (Owner of record: Stephen Berish, Trustee).

Chris Varetimos, representing himself stated he owns *The Pizza Guyz* restaurant located at 439 Nathan Ellis Highway, Route 151 in the Brickyard Market Place. He is proposing to add a walk-in cooler in the back in an area used by employees only, and looking to occupy one of the parking spaces and possibly two. The reason is to free up some space inside the kitchen by removing the walk-in freezer and place a larger one outside to expand the storage.

Mr. Jodka stated he viewed the site, and in his opinion will not be disturbing any neighbors, or parking spaces for patrons. He noticed there is plenty of parking in the front of the building.

Mr. Morgan spoke to Glen Harrington, Board of Health and thought it would be possible to move the dumpsters together, but the dump trucks would not be able to maneuver.

Mr. Varetimos stated the area for the cooler is approximately 8-10 feet away from the dumpster, and stated the dumpster pen is probably twice as big then is needed. There is a fence located between the dumpster and the proposed cooler.

Mr. Goldstein asked if the Board of Health was concerned about the location. Mr. Morgan stated that Glen would prefer the cooler be closer to the building.

Mr. Furbush read the Board of Health comments; "BOH has no objections but would prefer the cooler/freezer unit closer to the building. Applicant is to request an amendment to their food permit with the BOH."

Mr. Varetimos stated the reason it will be placed next to the dumpster is because the owner requested that area. He would have preferred outside the back door, and said the Fire Department and tenants were fine with it, but the landlord requested it be placed next to the dumpster.

Mr. Varetimos stated there are approximately 8-9 open parking spaces available in the back, and there's always plenty of parking spaces open in the front for patrons and customers. The structure is approximately 8 feet high and will be put directly on the pavement. There is already electrical supplied from the overhead parking lights and there will be an extra line installed.

Mr. Jodka made a motion to approve Christos Varetimos', (Brickyard Marketplace Nominee Trust) request for a modification under Special Permit SP-98-83 to place a 16 foot by 10 foot cooler/freezer in rear of retail restaurant on property located in a C-2 Zoning District at 439 Nathan Ellis Highway (Map 72 Parcel 23), Mashpee, MA. (Owner of record: Stephen Berish, Trustee). Referencing a plot plan prepared by; Dasilva Survey Services, 184 Bluejay Lane, E. Taunton, MA, titled; Site Plan, 439 Nathan Ellis Highway, Mashpee, MA., dated 03/10/2014, and also a drawing depicting the proposed cooler, prepared by; U.S. Cooler, 401 Delaware St., Quincy, IL, dated 3/12/2014, drawn; Web 1.0.216.

Mr. Furbush seconded, yes, Mr. Blaisdell, yes, Mr. Reiffarth, yes, Mr. DeBarros, yes, Scott Goldstein, yes. All were in favor.

Kenneth Konikowski: Request a modification under Special Permit SP-05-49 to enclose the exiting second floor deck and to add 111+/- square feet of cantilevered deck outside the enclosed area on property located in an R-3 Zoning District at 95 Whippoorwill Circle (Map 125 Parcel 152), Mashpee, MA.

Attorney, Kevin Kirrane stated he represents the petitioner in connection with the modification of the special permit granted by the Board in 2005. He provided the Board with plans and photographs of the existing structure. As indicated in the written presentation, the lot was actually created back in the 1970's. The building was constructed in the 1980's and applied 10 years ago for a substantial renovation to the existing structure. That renovation included an expansion of living space as well as the addition of a garage as provided in the photographs. A permit is probably not needed by the Board relative to enclosing the deck because it's just a glass enclosure around and overhead, but it is required to modify the permit as it relates to the extension of the deck which would provide some outdoor uncovered space of the second floor deck. There was discussion back in 2005 relative to how the Board would treat this particular lot because of the significant intrusion of the wetland resource area. Unfortunately, when these lots were created, the Zoning Bylaws relative to the induction of the wetland resource areas and things of that nature did not exist, and people built their homes and rules changed.

In effect, if someone were to look at the entire lot as originally approved by the Town Planning Board, the total lot area would be 18,950 square feet. The current lot coverage on a lot of that size would be about 14.3% if we were to add the 111 square feet of that cantilevered second floor deck that would increase the lot coverage to 14.62%.

Back in 2005, in fairness to the applicant, the Board made a finding that they would treat this lot having 16,118 square feet. There was a specific finding in the Board's decision attached in the written comments. The lot size is 16,118 square feet which is above the mean high water mark, the lot coverage after the renovation would be about 16.5% and adding the 111 square feet, cantilevered deck would increase the lot area to 17.19%. The current zoning by-law requires the deduction of anything that would meet the definition of a wetland or wetlands protection act. The current lot coverage would be about 29.55%, and with the addition 111 square foot second floor cantilevered deck, would be about 30.78% left with 9,000 square feet of upland.

Mr. Kirrane stated there is no activity taking place on the ground, and all activity is on the second floor deck. The addition of the 111 square feet of deck space is not having an adverse impact on the wetland resource area, and was approved by Conservation Commission. This is not creating the need for any additional parking, conforms to the setbacks, and is not any closer to the side yard than what currently exists. He asked the Board to vote to modify the permit that was granted back in 2005 relative to the addition of this minimal cantilevered portion of the

outside second floor deck.

Mr. Reiffarth asked what the hardship is for this request of 15 feet setback. Mr. Kirrane stated that there is no need to demonstrate a hardship because it's not an application for a variance. The existing setback of the building is 11.2 feet, and not getting any closer to the side yard.

The Board questioned if judging the lot coverage by the mean high water. The current bylaw is deducting all wetlands. Kevin stated it used to be water or wetlands, now it's the coastal banks which takes more land area out of the lots that are on a pond or on the shore.

Mr. Furbush read the Conservation Comments into the record; "Approved by Conservation Commission (concom)-no issues".

Mr. Jodka made a motion to approve Kenneth Konikowski's request for a modification under Special Permit SP-05-49 to enclose the exiting second floor deck and to add 111+/- square feet of cantilevered deck outside the enclosed area on property located in an R-3 Zoning District at 95 Whippoorwill Circle (Map 125 Parcel 152), Mashpee, MA. The Board approves this request and finds the proposal is not substantially more detrimental than the existing non-conforming structure, the new dwelling will be an improvement and will conform to current building code requirements, is comparable in size and character to other structures in the neighborhood and there is sufficient parking and setbacks as may be required. Also referencing a plot plan prepared by BSS Design, Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, MA, entitled; "Plot Plan – Proposed Deck at 95 Whippoorwill Circle, Mashpee, MA, prepared for Kenneth Konikowski, scale 1" = 20", dated January 27, 2014, drawn EJP, TJB, job number 13249, drawing number P21-128.

Mr. Furbush seconded, yes, Mr. Blaisdell, yes, Mr. Reiffarth, yes, Mr. DeBarros, yes. All were in favor.

Stephen Chafetz: Request a Variance under Article XIV §174-85 of the Zoning By-laws, and M.G.L. Chapter 21A, §2 (7), to vary the setback requirements of the ACEC to allow for construction of a new dwelling on property located in an R-3 Zoning District at 403 Great Oak Road, (Map 126 Parcel 48), Mashpee, MA. (Owner of record: Alexander MacLellan and Lynn M. MacLellan).

Stephen Chafetz: Request a Variance under Article VII §174-33, of the Zoning By-laws to vary the setback at least fifty (50') feet from any water or wetland as defined by M.G.L. Chapter 131, §40 to allow for construction of a new dwelling on property located in an R-3 Zoning District at 403 Great Oak Road, (Map 126 Parcel 48), Mashpee, MA.

Attorney, Kevin Kirrane stated he represents the petitioners in connection with the proposed application for Variance relief of a single-family residential structure on Great Oak Road. Two months ago, the MacLellan's had re-applied with pre-approved plans for a similar proposal that expired, and the Board saw fit to renew that Variance relief for the lot size, the setbacks to ACEC, and the setback relief to wetland resource area. Mr. Kirrane stated that he is not convinced the Board couldn't view this as minor modification of the previously approved plans because there is very little change to what is being proposed other than the design of the structure. He highlighted the plan, showing the top of the coastal bank wetland resource area, the ACEC line.

Mr. Kirrane explained the proposed home is a single-story residential structure with a walk-out. On the plans, he highlighted the previously approved structure in yellow, and highlighted the proposed structure in green. As indicated in his written comments, there is no activity taking place on the ground within the ACEC under the new design. As the Board previously approved, there was activity based upon the pilings that were beneath the deck that actually crossed into the ACEC area. The cantilevered deck is the only portion of the proposed residence that lies within the ACEC area. The pilings will support the deck some 4 feet on the side of the ACEC. This is an improvement on the design based upon what was previously approved which is the reason the modification will be such that the Board could consider minor and not requiring any further relief.

Also, the encroachment of the deck on the previously approved plan was in the ACEC, and was closer to the wetland resource area built over the buffer zone. The wetland resource area requires a 50 foot setback and a 25 foot setback from the ACEC. The previously approved design highlighted in yellow was situated within that 50 foot buffer. The new proposal is also within the 50 foot buffer, but not as much as an intrusion the Board previously approved.

Mr. Kirrane stated Dave MacLean, Architect was present if the Board had any questions, and Mr. and Mrs. Chafetz were also present. Mr. Kirrane mentioned there was some concern that the proposed building is much larger than the Board had previously approved. He asked Dave MacLean to provide a schedule of square footages and particular lot coverage which was attached to the rear of the written presentation. The previously approved square footage of the proposed structure was 2,932 square feet, which is 18% lot coverage. The proposed square footage is 2,975 which is a 42 square foot difference and still represents 18% lot coverage. He also pointed out in his written remarks, the lot is part of the Little Neck Bay cluster sub-division, and technically under the bylaw cluster subdivision rules, 30% lot coverage is allowed. This would comply in the applicable R-3 Zoning District. He stated other than the two variance requests the Board granted the owner of the property, which is under agreement with the Chafetz', the lot is not considered buildable unless relief was granted because of the 40 foot setback requirement. The hardship relates to the site conditions of this lot. The relief can be granted without detriment to the public good or

the neighborhood.

Mr. Furbush read the comments from Conservation Commission: "Most recent plan changes (smaller house/cantilevered deck) administratively approved at the March. 27th Concom hearing."

Mr. Furbush read a letter sent from Frankie Drew, Manager of the (ARC) Architectural Review Committee; "The ARC reviewed the design of the new home to be built at the above referenced address. We have no issue with the design of the home and approved it on a preliminary basis. We have a few issues to work out i.e. roof color, use of window materials to be discussed, and a certified Site Plan for the Committee to review for setbacks. We feel that none of these issues will be a problem to work out with the Chafetz's and final approval will be given. We understand that the ZBA hearing is scheduled for April 9, 2014 and their attorney will be issuing a packet of information, including this email, in that packet on March 14, 2014."

Mr. Furbush read a comment from Catherine Laurent dated Wednesday, April 9, 2014; "Please advise the Board that the above applicant, if the requested variances are approved, shall require a Curb Cut Permit from the DPW prior to any work being performed on the property and/or issuance of a building permit."

David McLean, Architect stated the research he did on the lot was originally developed in 1974 with the Tide Run cluster subdivision. There were four lots along Great Oak Road at the time. According to the President of New Seabury, who owned the water district in that area had a water main installed, and it short cut across the marsh to reach Little Neck Bay. The two lots to the West are now unbuildable because the water main curves down the center. He stated the foundations for the deck are now 5.5 feet further back from the resource area that was previously approved. The big difference is the scale of the house relative to the neighbor's house which is quite larger; 2.5 stories with a walk-out. The proposed house is one story with a walk-out similar to the New Seabury homes.

Mr. Jodka made a motion the Zoning Board of Appeals grants a Variance to Stephen Chafetz under Article XIV §174-85 of the Zoning By-laws, and M.G.L. Chapter 21A, §2 (7), to vary the setback requirements of the ACEC to allow for construction of a new dwelling on property located in an R-3 Zoning District at 403 Great Oak Road, (Map 126 Parcel 48), Mashpee, MA. (Owner of record: Alexander MacLellan and Lynn M. MacLellan). The Board grants complete variance relief of 25 feet setback into the ACEC area.

Mr. Jodka made a motion the Zoning Board of Appeals grants a Variance to Stephen Chafetz under Article VII §174-33, of the Zoning By-laws to vary the setback at least fifty (50') feet from any water or wetland as defined by M.G.L. Chapter 131, §40 to allow for construction of a new dwelling on property located in an R-3 Zoning District at 403 Great Oak Road, (Map 126 Parcel 48), Mashpee, MA. The Board grants a complete variance relief of 50+ feet into the wetlands resource area.

Mr. Furbush made reference to a plot plan provided by Cape & Island Engineering, Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA, drawing titled: Site and Septic Design, for Owner of Record: Alexander & Lynn M. MacLellan, 9 Sea Mist Drive, Orleans, MA, dated 3/12/14, Sewage System Design Plan, 403 Great Oak Road, in Mashpee, MA. Drawn by Matthew C. Costa, drawing file name: Greateoak_403_Chafetz.

Mr. Blaisdell, seconded, yes, Mr. Reiffarth, yes, Mr. Furbush, yes, Mr. Goldstein, yes. All were in favor.

Mashpee Commons Limited Partnership: Request modifications under Special Permit SP-86-04-024 to address actual built conditions, relocate certain square footage of building space and location of parking areas, and previously approved residential units on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Unit 33, (Map 74 Parcel 20), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board).

Mashpee Commons Limited Partnership: Request a Variance under Article VII §174-31 (Land Space Requirements) of the Zoning By-laws to vary the building setback on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Unit 33, (Map 74 Parcel 20), Mashpee, MA. (Rescheduled from March 26, 2014 Public Hearings with a full member Board).

Mr. Furbush read a letter received dated April 8, 2014 from; "Mashpee Commons Limited Partnership would like to request a continuance from the two Zoning Board of Appeals hearings currently scheduled for the April 9, 2014 meeting. We request that the hearing be continued until the April 23, 2014 meeting. The Town Planner has raised certain discussion points that we feel would be best addressed prior to coming before the Board.

Both hearings are related to the same new building project within Mashpee Commons. One request is to update the Special Permit to address the construction of the new building. The second hearing is a variance request related to the setback of the building.

Thank you in advance for your consideration of this request. We look forward to continuing to work with the Zoning Board of Appeals.

Please let me know if you have any questions. Sincerely, Thomas K. Feronti.”

Mr. Furbush made a motion to accept the letter of continuance noting that a vote will be required at the April 23, 2014 hearings. Mr. Blaisdell, seconded, yes, Mr. Reiffarth, yes, Mr. Jodka, yes, Mr. Goldstein, yes. All were in favor.

OTHER BUSINESS

Mr. DeBarros made a motion to accept March 12, 2014 meeting minutes. Mr. Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Reiffarth, yes, Mr. Jodka, yes, Mr. Goldstein, yes. All were in favor.

Mr. Reiffarth, made a motion to adjourn, Mr. Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals